Supreme Court, U.S.
FILED
AUG 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1884

In The

Supreme Court of the United States

October Term, 1988

STATE OF ILLINOIS,

Petitioner,

vs.

SEQUOIA BOOKS, INC., et al.,

Respondent.

On Petition for a Writ of Certiorari To The Supreme Court of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

J. STEVEN BECKETT
BECKETT & CREWELL
313 North Mattis, Suite 214
Post Office Box 6479
Champaign, Illinois 61826-6479
(217) 359-0263

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether the closure of a bookstore based on prior obscenity convictions by application of a state nuisance abatement statute is constitutionally permissible under the First Amendment?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

PRAYER 1

OPINION BELOW 2

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT: 4

(A) THE JUDGMENT BELOW IS SUPPORTED BY THIS COURT'S DECISION IN *VANCE v. UNIVERSAL AMUSEMENT CO.*, 445 U.S. 308 (1980), BECAUSE THE PUBLIC NUISANCE STATUTE IN QUESTION IS AN INVALID PRIOR RESTRAINT. 4

(B) THE ILLINOIS SUPREME COURT CORRECTLY APPLIED THE TEST OF *UNITED STATES v. O'BRIEN*, 391 U.S. 367 (1968), IN FINDING THE PUBLIC NUISANCE ACT VIOLATED THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. 4

CONCLUSION 10

TABLE OF CONTENTS
TO APPENDIX

JOURNAL OF PROCEEDINGS, 84TH GENERAL ASSEMBLY, ILLINOIS SENATE, MAY 23, 1985 .. App. 1

TABLE OF AUTHORITIES

Page

CASES

Arcara v. Cloud Books, Inc., 478 U.S. 697, 106 S.Ct. 3172 (1986) 8

Fort Wayne Books v. Indiana, ___ U.S. ___, ___, 109 S.Ct. 916, 929 (1989) 6

Freedman v. Maryland, 380 U.S. 51 (1965) 5

Kingsley Books v. Brown, 354 U.S. 437 (1957) 6

Near v. Minnesota, 283 U.S. 697 (1931) 5

People v. Sequoia Books, Inc., 165 Ill.App.3d 143, 518 N.E.2d 775 (2nd Dist. 1988) 2

People v. Sequoia Books, Inc., 127 Ill.2d 271, 537 N.E.2d 302 (1989) 2, 7

People ex rel Busch v. Projection Room Theatre, 17 Cal.3d 42, 130 Cal.Rptr. 328, 440 P.2d 600 (1976) 7

Sanders v. State, 231 Ga. 608, 203 S.E.2d 153 (1974) 7

Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975) 5

Spokane Arcades v. Brockett, (9th Cir. 1981) affirmed 454 U.S. 1022 (1981) 7

State v. Diversified Theatre Corporation, 59 Mich. App.223, 229 N.W.2d 389 (1975) 9

State ex rel Kidwell v. U.S. Marketing, Inc., 102 Id. 451, 631 P.2d 622 8

United States v. O'Brien, 391 U.S. 67 (1968) 4, 6, 7, 8, 9

Vance v. Universal Amusement Co., Inc., 445 U.S. 308, 100 S.Ct. 1156 (1980) 4, 6, 9

TABLE OF AUTHORITIES – Continued

Page

STATUTES

United States Constitution, First Amendment . . 4, 5, 7, 8, 9

Idaho Moral Nuisance Abatement Act, I.C. Sections 52-401 8

Illinois Obscenity Statute, Chapter 38, Sections 11-20(d) 2, 8

Illinois Criminal Public Nuisance Act, Chapter 38, § 37-1 et seq. Ill. Rev. Stat. 1987 . . . . . 2, 3, 4, 6, 7, 9

Illinois Unified Corrections Code Sections 1005-8-1(a)(7) and 1005-9-1(a)(1) 8

No. 88-1884

In The

Supreme Court of the United States

October Term, 1988

STATE OF ILLINOIS,

Petitioner,

vs.

SEQUOIA BOOKS, INC.,[1] et al.,

Respondent.

On Petition for a Writ of Certiorari To The Supreme Court of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

PRAYER

The respondent, Sequoia Books, Inc., asks this Court to deny the Petition for Writ of Certiorari to review the judgment and order of the Illinois Supreme Court entered March 22, 1989, insofar as the petitioner does not raise an issue worth of review.

[1] There are no parent companies, subsidiaries or affiliates of the corporation.

OPINION BELOW

The opinion and judgment of the Illinois Supreme Court was issued on March 22, 1989 in *People v. Sequoia Books, Inc.* The decision is reported at 127 Ill.2d 271, 537 N.E.2d 302 (1989). A copy of the opinion is included in the petitioner's appendix as Exhibit "A". A copy of the opinion and judgment of the Illinois Appellate Court for the Second District in the same cause was issued on January 19, 1988 and is reported as *People v. Sequoia Books, Inc.*, 165 Ill.App.3d 143, 518 N.E.2d 775 (2nd Dist. 1988). A copy of the opinion is included in the petitioner's appendix as Appendix "B".

STATEMENT OF THE CASE

Respondent, Sequoia Books, Inc., accepts petitioner's statement of the case except for the deletion of the legislative history concerning an amendment to the Illinois Criminal Public Nuisance Act, Chapter 38, Section 37-1, *et seq.* That legislative history (which exists in the record in the courts below) is attached in the appendix to this brief as Exhibit "A".

On September 21, 1985, the State of Illinois enacted legislation, Public Act 84-787, to be effective January 1, 1986, which amended the Illinois Criminal Public Nuisance Act to include within its scope of offenses a violation of the Illinois Obscenity Statute, Chapter 38, Section 11-20, Ill.Rev.Stat. (1985). Prior to the amendment, a public nuisance action could not be maintained against an adult bookstore as a consequence of a violation of the Illinois Obscenity Statute. Proposed as a second part of a

bill which amended the definition of prostitution, the amendment to the nuisance act, was first proposed in the Illinois Senate as Senate Bill 648. At its third reading on May 23, 1985, its sponsor, Senator Barkhausen, described the import of the legislation:

> Mr. President and members, Senate Bill 648 expands the definition of prostitution to cover certain other sexual acts. I'm a little bit bashful so I'm hesitant to go into all of them, but . . . but certain sexual acts in addition to sexual intercourse that are engaged in for profit or for money. We have a situation in our County of Lake, I know the representative of the Cook County State's Attorney's Office also appeared in support of this bill that would enable prosecutors to go after places of . . . prostitution more broadly defined where health spas and nudie bars in one sort of . . . one sort of joint or another are in actuality certain types of houses of prostitution. It will enable our prosecutors to try to clean up this type of activity and to . . . and to get these undesirable operations out of our counties and out of our State. It . . . it also amends the public nuisance provisions of the Criminal . . . Criminal code to declare that any activities which fit the definition of obscenity would be nuisance per se to also facilitate prosecution of these types of activities.

(JOURNAL OF PROCEEDINGS, 84TH GENERAL ASSEMBLY, ILLINOIS SENATE, MAY 23, 1985 at page 126, Appendix at page App. 1-2)

During the debate that followed, Senator Karpiel asked a question about the public nuisance provision that was being expanded and wondered whether the amendment might "perhaps aid in a way of getting rid of some

of these porno shops that we might have in our area?". Senator Barkhausen responded that the legislation was

> attempting to make it easier for State's Attorney's to proceed against operation that can be categorized as obscene acts or which engage in child pornographs so that by describing them in this Statute as automatically or per se a public nuisance so that the State's Attorneys can go into court to seek to abate those facilities and operations as public nuisances.

(JOURNAL OF PROCEEDINGS, 84TH GENERAL ASSEMBLY, ILLINOIS SENATE, MAY 23, 1985 at page 129, Appendix at page App. 6)

The present litigation was commenced by the Kendall County State's Attorney's Office on January 7, 1986. The complaint sought to have the adult bookstore premises known as "Denmark II" declared a public nuisance and abated by court order.

REASONS FOR DENYING THE WRIT

(A) THE JUDGMENT BELOW IS SUPPORTED BY THIS COURT'S DECISION IN *VANCE v. UNIVERSAL AMUSEMENT CO.*, 445 U.S. 308 (1980), BECAUSE THE PUBLIC NUISANCE STATUTE IN QUESTION IS AN INVALID PRIOR RESTRAINT.

(B) THE ILLINOIS SUPREME COURT CORRECTLY APPLIED THE TEST OF *UNITED STATES v. O'BRIEN*, 391 U.S. 367 (1968), IN FINDING THE PUBLIC NUISANCE ACT VIOLATED THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Respondent, Sequoia Books, Inc., submits that the judgment of the Illinois Supreme Court, holding the Illinois Criminal Public Nuisance Act unconstitutional in

violation of the First Amendment to the Constitution of the United States is consistent with prior decisions of this court. The import of the statute is that any business premises which sells communicative items may be enjoined and closed as a result of the past sale of obscene material.

Our constitutional system is distinguished from other governmental systems by the basic guarantees of the Bill of Rights. The First Amendment stands foremost among those guarantees. Certainly obscene speech is not entitled to constitutional protection, but our system prides itself in the punishment of such unprotected speech following its utterance and the rejection of any system that would prevent such utterance from being made at all.

The landmark case of *Near v. Minnesota*, 283 U.S. 697 (1931), invalidated a Minnesota public nuisance statute. That statute defined as a public nuisance the possession or sale of an obscene or defamatory publication and permitted injunctive relief against publication in the future as well as abatement of the nuisance, and potential criminal penalties. This court condemned the statute as unconstitutional because of its imposition of a prior restraint on protected speech.

The constitutional doctrine pronounced in *Near* as evolved into a general constitutional principle that systems of prior restraint have a heavy presumption against the validity. *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975) and that a system of procedural safeguards is necessary for any system of prior restraint, *Freedman v. Maryland*, 380 U.S. 51 (1965). Even so, this court has given its stamp of approval only on a system of

prior restraint that focuses upon specific, named material. *Kingsley Books v. Brown*, 354 U.S. 437 (1957).

In *Vance v. Universal Amusement Co.*, 445 U.S. 308 (1980), this Court had before it the same issue presented in the present petition for certiorari. A Texas Public Nuisance Statute, when combined with provisions of the Texas Code of Civil Procedure, provided for the issuance of injunctions and abatement orders against unnamed movies, which in essence, could close down bookstores or theatres, was held unconstitutional. In doing so, the Court merely reaffirmed long-standing principles concerning prior restraints. Recently, this Court again confirmed those longstanding principles, *Fort Wayne Books v. Indiana*, ___ U.S. ___, ___, 109 S.Ct. 916, 929 (1989).

The legislative history behind the amendment to the Illinois Criminal Public Nuisance Act emphasizes that the legislation is to be a prosecutor's tool to close bookstores. That, of course, is the essence of prior restraint. The facts in this case, wherein the prosecutor immediately used this legislation and eventually was successful in closing the bookstore demonstrates the practical result of a system of prior restraint.

In the lower courts, the Illinois Appellate Court correctly analyzed the statute in the present situation as one of prior restraint that ran afoul of this court's previous decisions. This court should deny the petition for certiorari in this cause because the Appellate Court was correct.

The Illinois Supreme Court acknowledged the availability of a prior restraint analysis, but opted instead to examine the issue presented by the amended Public Nuisance Act under the principles set forth in *United States v.*

O'Brien, 391 U.S. 67 (1968). The Court's decision to do so was unusual in the sense that the great majority of courts who have examined the constitutional validity of public nuisance type statutes have done so under the prior restraint analysis, e.g., *Spokane Arcades v. Brockett*, (9th Cir. 1981) affirmed 454 U.S. 1022 (1981); *People ex rel Busch v. Projection Room Theatre*, 17 Cal.3d 42, 130 Cal.Rptr. 328, 440 P.2d 600 (1976); *Sanders v. State*, 231 Ga. 608, 203 S.E.2d 153 (1974).

Assuming, however, that this Court would accept the *O'Brien* analysis, there can be little quarrel that the Illinois Supreme Court correctly applied the *O'Brien* test. The *O'Brien* test requires a determination whether the governmental regulation in issue is within the constitutional power of the government, whether it furthers an important or substantial governmental interest, whether that interest is unrelated to the suppression of free speech, and whether the incidental impact on First Amendment freedoms is not greater than necessary to the furtherance of the governmental interest. *United States v. O'Brien*, 391 U.S. at 376.

In its opinion, the Illinois Supreme Court determined that the Criminal Public Nuisance Act was directed at sexually explicit material, some of which would not be protected speech, and some of which would be protected speech. The Court felt that the nuisance abatement remedy was "too blunt an instrument" when considering the available criminal penalties, thus violating the last *O'Brien* prong. *People v. Sequoia Books, Inc.*, 127 Ill.2d 271, 288, 537 N.E.2d 302, 310 (1989).

In short, the remedy of closure is far too harsh in light of available criminal penalties. Under Illinois law, a

person convicted of Obscenity faces imprisonment of up to three years and a fine of up to $10,000 for subsequent offenses, as set forth in Chapter 38, Sections 11-20(d), and Illinois Unified Corrections Code Sections 1005-8-1(a)(7) and 1005-9-1(a)(1).

If under *O'Brien*, the State's argued purpose is the regulation of obscenity, one cannot fault the Illinois Supreme Court analysis that criminal remedies allow focus upon specific named materials and punishment for those specific named materials. To permit the closure of an entire business operation, whether it be a drug store, movie theatre, or even adult bookstore for past acts is much more than punishment and would result in the prohibition of sale or dissemination of non-obscene, protected speech in the future. This is much more than subsequent punishment – it is prior restraint.

To the extent the State seeks to rely upon *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 106 S.Ct. 3172 (1986), the State attempts to generate an issue where none exists. *Arcara* is not a First Amendment case and was not decided under any First Amendment standard of review. On the other hand, the present case involves issues surrounding the dissemination of printed materials, clearly invoking First Amendment concepts for application.

The State further contends that conflict in authority exists between the decision of the Illinois Supreme Court and that of the Idaho Supreme Court in *State ex rel Kidwell v. U.S. Marketing, Inc.*, 102 Id. 451, 631 P.2d 622. An examination of the *Kidwell* decision demonstrates that the appellant's had failed to contend that the Idaho Moral Nuisance Abatement Act, I.C. Sections 52-401 *et seq.* was

an invalid system of prior restraint (see 631 P.2d at 625, N.1). Moreover, the Idaho Supreme Court sought to distinguish this Court's holding in *Vance v. Universal Amusements Co., Inc.*, 445 U.S. 308, 100 S.Ct. 1156 (1980). (See 631 P.2d at 625 N.3), when *Vance* clearly applied in a nuisance abatement situation.

Similarly the contention that the decision of a Michigan intermediate appellate court in *State v. Diversified Theatre Corporation*, 59 Mich. App. 223, 229 N.W.2d 389 (1975) is in conflict with the decision below, represents an attempt to further visualize a conflict where none exists. The decision of the Michigan Supreme Court reversed the Appellate Court, *State v. Diversified Theatre Corp.*, 396 Mich. 244, 240 N.W.2d 460 (1976). While the Michigan Supreme Court's decision was based on non-constitutional grounds, that decision emasculated any precedential effect of the lower court opinion. Petitioner's contention that there is a conflict in jurisdictions is illusory.

The Illinois Supreme Court's opinion invalidating the amended Criminal Public Nuisance Act represents a valid resolution of a difficult First Amendment issue. Respondent believes that the more strict "prior restraint" standard of review is applicable in such cases, but under either that standard or the *O'Brien* standard, the statute in question is plainly unconstitutional.

CONCLUSION

Wherefore, Sequoia Books, Inc. asks this court to deny the Petition for Writ of Certiorari in this cause.

Respectfully Submitted,

J. Steven Beckett
Beckett & Crewell
313 North Mattis, Suite 214
Post Office Box 6479
Champaign, Illinois 61826-6479
(217) 359-0263

Journal of Proceedings
84th General Assembly, Illinois Senate
Page 125 – MAY 23, 1985

SECRETARY:

Senate Bill 648.

(Secretary reads title of bill)

3rd reading of the bill.

PRESIDING OFFICER: (SENATOR DEMUZIO)
Senator Barkhausen.

SENATOR BARKHAUSEN:

[page 126] Mr. President and members, Senate Bill 648 expands the definition of prostitution to cover certain other sexual acts. I'm a little bit bashful so I'm hesitant to go into all of them, but . . . but certain sexual acts in addition to sexual intercourse that are engaged in for profit or for money. We have a situation in our county of Lake, I know the representative of the Cook County State's Attorney's Office also appeared in support of this bill that would enable prosecutors to go after places of . . . prostitution more broadly defined where health spas and nudie bars in one sort of . . . one sort of joint or another are in actuality certain . . . certain types of houses of prostitution. It will enable our prosecutors to try to clean up this type of activity and to . . . and to get these undersirable operations out of our counties and out of our State. It . . . it also amends the public nuisance provisions of the Criminal . . . Criminal Code to declare that any activities which fit the definition of obscenity would be nuisance per se to also facilitate prosecution of these types of activities. Be happy to try to answer any questions.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Any discussion? Senator Sangmeister.

SENATOR SANGMEISTER:

Thank you, this is a . . . a very difficult bill to arise and . . . and talk about but, you know, for time immemorial in the State of Illinois we've had a definition of what prostitution is all about. And now as I look at the bill here we have underlined that this is going to constitute prostitution, and again, even the sponsor doesn't want to talk about his own language, that's how . . . Geo, this is really a pornographic bill, you ought to be paying attention. Prostitution is now being expanded . . . prostitution is now being expanded to cover "Or any other act involving the touching or fondling of the sex organs, anus or breasts of one person or another." Now [page 127] think about that for awhile, if you will. That . . . that's going to amount to prostitution? You know, I . . . I really think that we're going a little bit above and beyond . . . I . . . I never understood, Senator Barkhausen, where you're coming from on this, but . . . I believe that that is a little bit beyond what we've all thought prostitution has been and I . . . as . . . as difficult it is to . . . to speak against such great bills, I think you better take a good look at this one.

PRESIDING OFFICER: (SENATOR DEMUZIO)

[page 128] Further discussion? Senator Marovitz.

SENATOR MAROVITZ:

Well, . . . this is the feel for fee bill, I think. It really . . . I wonder if we should be getting into these

areas with so many other really important bills up. But as Senator Sangmeister said, the definition of prostitution is as old as anything else that we ever deal with, and why we have to "tinker" with it, excuse that phraseology . . . and . . . and get into things that really . . . nobody . . . nobody believes is prostitution is beyond me. I mean, each one of us, if you take a look at this language, can think of situations that are innocent situations or certainly not situations where somebody should be charged with prostitution. And . . . and basically what we're doing is we're really diminishing the charge of prostitution and I don't think that's what we want to do. This is really . . . goes way, way, way beyond what we want to do. And again, it passed out of committee, it was, I think, the last bill that passed out of committee. We probably had just a . . . a few people left in committee and . . . and I would say that we all ought to vote Present on this legislation 'cause it really doesn't, it . . .-it doesn't belong on the books and it's not going to be on the books 'cause I know over in the House they're going to kill it, but why don't we do our job here and kill it here first.

PRESIDING OFFICER: (SENATOR DEMUZIO)

[page 128] Further discussion? Senator Geo-Karis. Senator Geo-Karis.

SENATOR GEO-KARIS:

Will the . . . will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator Geo-Karis.

SENATOR GEO-KARIS:

In essence, what your bill does, and correct me if I'm wrong, is make it a nuisance if any act of prosecution . . . if . . . prostitution that you described is committed, is that correct?

PRESIDING OFFICER: (SENATOR DEMUZIO)

SENATOR GEO-KARIS:

Explain it for me just . . . in one sentence.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Moment . . . Senator Barkhausen.

SENATOR BARKHAUSEN:

That's correct, if it's prostitution or if it's an act of obscenity it would fall within the public nuisance provisions of the Criminal Code.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Geo-Karis.

SENATOR GEO-KARIS:

Well, Mr. President and Ladies and Gentlemen of the Senate. Some of you think we're tinkering with prostitution. Some of you might think it's pleasure. Some of you might think that we shouldn't be here talking about it. But you know, try and . . . and . . . and complete a charge against someone who is involved, as Senator Barkhausen has recited, and see how far you can get. I think it's a good bill. I think it's trying to clear up and clean up some of the perverted morals that we have with some of these book stores and what have you . . . and . . . and I think it's high time that . . . we're not [page 129] trying to be

censoring but I think we are trying to be a little more careful and I think the bill has some good basis. All it does is expand the definition of prostitution . . . to . . . to a public nuisance, and it is a public nuisance, so is solicitation for prostitution, take your choice, they're both just as bad. I speak for the bill.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Further discussion? Senator Jeremiah Joyce. Senator Joyce.

SENATOR JEREMIAH JOYCE:

Well, . . . I . . . I . . . we . . . this . . . a bunch of kids up in this place, that's all right, never mind . . . forget it.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Karpiel.

SENATOR KARPIEL:

Yes, thank you, Mr. President. Will the sponsor yield?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator Karpiel.

SENATOR KARPIEL:

Senator Barkhausen, . . . not being an attorney, I don't quite understand the public nuisance provision here. How are we expanding that . . . that provision to . . . perhaps aid in a way of getting rid of some of these porno shops that we might have in our area?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Barkhausen.

SENATOR BARKHAUSEN:

. . . attempting to make it easier for state's attorneys to proceed against . . . operations that can be categorized as obscene acts or which engage in child pornography so that by describing them in this Statute as automatically or per se a public nuisance so that the state's attorneys can go into court to seek to abate those . . . those facilities and operations as public nuisances. [page 130]

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Karpiel.

SENATOR KARPIEL:

Well, in that . . . in that context what does abate mean, close them down? . . . close them down? Are we talking about shops that sell adult movies and books and paraphernalia, et cetera?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Barkhausen.

SENATOR BARKHAUSEN:

Anything that under the Criminal Code could be defined as being obscene or would come under the child pornography provisions of the Criminal Code would- . . . would be . . . a potential target under this legislation.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Hall. All right. Senator Netsch.

SENATOR NETSCH:

Thank you, Mr. President. Senator Geo-Karis, just to clarify one thing. It is true that there is a provision in the

bill which adds to the definition of maintaining a public nuisance, but it seems to me that is not the thrust of the bill and that is not what Senator Sangmeister and Senator Marovitz were . . . were concerned about. It is a redefinition of prostitution and if you look at the definition which Senator Sangmeister read, it . . . it opens the world and I think it does, in fact, diminish what is something quite legitimate to go after and that is literally prostitution. But this means that almost anything could . . . could be defined as prostitution, and that means that you are going to get more and more disrespect for the law and less and less effective enforcement of that which is legitimately prostitution. It seems to me that is the point that Senator Sangmeister was making, not so much . . . just added something to the definition of public [page 131] nuisance.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Barkhausen m[a]y close.

SENATOR BARKHAUSEN:

Mr. President and members, I should have first asked the Chair before this debate began whether this is in any way being filmed on cable TV. But to . . . being assured that it isn't, I wouldn't want to fall prey to the new provisions under Senate Bill 617. Let me simply make the point that what we're talking about here, broadly speaking, is sexual gratification for money. And I know we have in Lake County, I'm sure many of you have within your districts, certain facilities, be they health spas or whatever they may front as, they are actually in one way or another offering certain types of sexual acts in exchange for money. We are no way seeking to diminish

in importance the traditional common law crime of prostitution; we are simply saying that we are looking for a way that our prosecutors can . . . can really clean up our neighborhoods, can get rid of the operations that carry on with this type of sexual activity for money that really diminishes the quality of life in the area around us. For that reason, I ask for your support of this bill.

PRESIDING OFFICER: (SENATOR DEMUZIO)

The question is, shall Senate Bill 648 pass. Those in favor will vote Aye. Those opposed vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 38, the Nays are 2, . . . 12 . . . 15 voting Present. Senate Bill 648 having received the required constitutional majority is declared passed. Senator . . . Bloom, for what purpose do you arise?

SENATOR BLOOM:

Thank you, Mr. President. That bill we just passed would prohibit Senator Rigney from dancing with a tall woman.